

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

HUDSON SPECIALTY INSURANCE COMPANY

PLAINTIFF

V.

CAUSE NO. 5:17-CV-137-DCB-MTP

TALEX ENTERPRISES, LLC,
JUBILEE PERFORMING ARTS CENTER, INC.,
TERRANCE L. ALEXANDER, and the
BOARD OF MAYOR AND SELECTMEN
OF MCCOMB, MISSISSIPPI, et al.

DEFENDANTS

ORDER AND OPINION

Counterclaimant Faraway, LLC moves the Court for an order withdrawing its proposed amended counterclaim and the motion for leave to amend associated with it, and granting it leave to file a revised first amended counterclaim. **[Doc. 76]**

Background

This insurance-coverage dispute requires the Court to decide Hudson Specialty Insurance Company's duties to its insureds, Talex Enterprises, LLC ("Talex") and Terrance Alexander, under insurance policies covering property located at 220-230 Main Street, McComb, Mississippi (the "Main Street Building").

The Main Street Building collapsed in July 2017, damaging nearby buildings and disrupting downtown McComb traffic. In August

2017, the City of McComb (the "City") sued the Main Street Building's owner — Talex — in Pike County Chancery Court, seeking damages on negligence and public nuisance theories.

In response to the City's state-court suit, Talex requested a defense from, and initiated a property coverage claim with, Hudson Specialty Insurance Company ("Hudson") under policies HBD10027329 and HBD10019191 (collectively, the "Policies").

Hudson denied coverage and filed this declaratory judgment action in November 2017. See Doc. 1. Hudson asks the Court to rescind the Policies due to misrepresentations it says Talex or Alexander made during policy-renewal negotiations. Hudson asks, in the alternative, for a declaration that the Policies do not cover the claims the City asserts against Talex and Alexander in the state-court action.

In addition to Talex, Alexander, and the City, Hudson's Complaint names as Defendants seventeen individuals and entities with an interest in the Main Street Building or a potential claim against Talex and Alexander arising from that building's collapse. Faraway is one of these Defendants.

Faraway holds a mortgage on the Main Street Building. See Doc. 57-2, p. 1. That mortgage is recorded in a deed of trust, which is a first lien against the Main Street Building. Faraway originally counterclaimed against Hudson in February 2018, seeking

compensatory and punitive damages for breach of contract, tortious breach of contract, and gross negligence. See Doc. 57. Faraway now moves the Court for an order permitting it to amend its Counterclaim to allege claims against Hudson for breach of contract, tortious breach of contract, gross negligence, and an equitable lien. See Doc. 76-1. Faraway's Motion is unopposed.

Faraway's proposed amended counterclaim alleges that Section 83-1-19 of the Mississippi Code creates an implied insurance contract between it and Hudson. And that implied insurance contract, Faraway continues, requires Hudson to pay it for the balance of its mortgage on the Main Street Building, notwithstanding any alleged misconduct by Talex or Alexander.

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The Court must grant leave to amend "freely" when justice so requires. FED. R. CIV. P. 15(a)(2). Denial of a motion for leave to amend requires a "substantial reason." Jones v. Robinson Property Grp., L.P., 427 F.3d 987, 994 (5th Cir. 2005). The Court gathers no reason, much less a "substantial" one, to deny Faraway's Motion.

Accordingly,

IT IS ORDERED that Faraway, LLC's Motion to Withdraw First Amended Counterclaim and Substitute Subsequent First Amended Counterclaim **[Doc. 76]** is GRANTED.

FURTHER ORDERED that Faraway, LLC's Motion for Leave to File First Amended Counterclaim **[Doc. 69]** is DENIED AS MOOT.

FURTHER ORDERED that Hudson Specialty Insurance Company's Motion to Dismiss **[Doc. 62]** Faraway, LLC's Original Counterclaim is DENIED AS MOOT.

SO ORDERED, this the 21st day of May, 2018.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE